

By: _____ .B. No. _____

Substitute the following for .B. No. _____:

By: _____ C.S..B. No. _____

A BILL TO BE ENTITLED

AN ACT

relating to the acquisition of real property by an entity with eminent domain authority and the regulation of easement or right-of-way agents.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 402.031, Government Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) At least once every two years, the attorney general shall:

(1) evaluate the landowner's bill of rights statement for compliance with the requirements of this section, including the requirement under Subsection (d) that the statement be written in plain language designed to be easily understood by the average property owner; and

(2) subject to Subsection (f), make any change to the landowner's bill of rights statement that the attorney general determines necessary to comply with the requirements of this section, including making a change to the writing style of the statement necessary to improve compliance with Subsection (d).

(f) Before making any changes to the landowner's bill of rights statement under Subsection (e)(2), the office of the attorney general shall:

(1) publish the proposed changes in the Texas Register; and

1 (2) accept public comment regarding the proposed
2 statement for a reasonable period after the date the proposed
3 statement is published under Subdivision (1).

4 SECTION 2. Subchapter D, Chapter 1101, Occupations Code, is
5 amended by adding Section 1101.162 to read as follows:

6 Sec. 1101.162. OMBUDSMAN FOR LANDOWNERS. (a) The
7 commission shall establish an ombudsman office within the
8 commission for the purpose of providing information to landowners
9 whose real property may be acquired by a governmental or private
10 entity through the use of the entity's eminent domain authority.
11 The commission shall select the ombudsman.

12 (b) The ombudsman shall provide information to and answer
13 questions from landowners described by Subsection (a), through the
14 commission's Internet website and a toll-free telephone number
15 established by the commission, regarding:

16 (1) the landowner's bill of rights prepared by the
17 attorney general under Section 402.031, Government Code; and

18 (2) the procedures for acquiring real property through
19 the use of eminent domain authority under Chapter 21, Property
20 Code, or other law.

21 SECTION 3. Section 1101.502(a), Occupations Code, is
22 amended to read as follows:

23 (a) To be eligible to receive a certificate of registration
24 or a renewal certificate under this subchapter, a person must:

25 (1) be, at the time of application:

26 (A) [~~1~~] at least 18 years of age; and

27 (B) [~~2~~] a citizen of the United States or a

1 lawfully admitted alien; and

2 (2) successfully complete the required courses of
3 study prescribed by this subchapter, including qualifying or
4 continuing education requirements.

5 SECTION 4. Subchapter K, Chapter 1101, Occupations Code, is
6 amended by adding Section 1101.508 to read as follows:

7 Sec. 1101.508. QUALIFYING AND CONTINUING EDUCATION
8 REQUIREMENTS. (a) The commission by rule shall approve coursework
9 that an applicant must successfully complete to be eligible for the
10 issuance or renewal of a certificate of registration under this
11 subchapter.

12 (b) An applicant for the issuance of an original certificate
13 of registration shall submit evidence satisfactory to the
14 commission that the applicant has completed at least 16 classroom
15 hours of coursework approved by the commission in:

16 (1) the law of eminent domain, including the rights of
17 property owners;

18 (2) appropriate standards of professionalism in
19 contacting and conducting negotiations with property owners; and

20 (3) ethical considerations in the performance of
21 right-of-way acquisition services.

22 (c) An applicant for the renewal of a certificate of
23 registration shall submit evidence satisfactory to the commission
24 that the applicant has, during the renewal period, completed at
25 least 16 classroom hours of coursework approved by the commission
26 that provides current information regarding:

27 (1) the subjects specified in Subsection (b); and

1 (2) other relevant subjects as prescribed by
2 commission rule.

3 SECTION 5. Section 1101.653, Occupations Code, is amended
4 to read as follows:

5 Sec. 1101.653. GROUNDS FOR SUSPENSION OR REVOCATION OF
6 CERTIFICATE. The commission may suspend or revoke a certificate of
7 registration issued under this chapter if the certificate holder:

8 (1) engages in dishonest dealing, fraud, unlawful
9 discrimination, or a deceptive act;

10 (2) makes a misrepresentation;

11 (3) acts in bad faith;

12 (4) demonstrates untrustworthiness;

13 (5) fails to honor, within a reasonable time, a check
14 issued to the commission after the commission has mailed a request
15 for payment to the certificate holder's last known address
16 according to the commission's records;

17 (6) fails to provide to a party to a transaction a
18 written notice prescribed by the commission that:

19 (A) must be given before the party is obligated
20 to sell, buy, lease, or transfer a right-of-way or easement; and

21 (B) contains:

22 (i) the name of the certificate holder;

23 (ii) the certificate number;

24 (iii) the name of the person the
25 certificate holder represents;

26 (iv) a statement advising the party that
27 the party may seek representation from a lawyer or broker in the

1 transaction; and

2 (v) a statement generally advising the
3 party that the right-of-way or easement may affect the value of the
4 property; ~~[or]~~

5 (7) directly or indirectly accepts a financial
6 incentive to make an initial offer that the certificate holder
7 knows or should know is lower than the adequate compensation
8 required under the Texas Constitution; or

9 (8) disregards or violates this chapter or a
10 commission rule relating to certificate holders.

11 SECTION 6. Section 21.0113, Property Code, is amended by
12 adding Subsections (c), (d), (e), and (f) to read as follows:

13 (c) Notwithstanding Subsection (b), a private entity, as
14 defined by Section 21.0114, with eminent domain authority that
15 wants to acquire real property for a public use has made a bona fide
16 offer only if the entity:

17 (1) satisfies the requirements of Subsection (b);

18 (2) makes an initial offer in writing to the property
19 owner that includes:

20 (A) a copy of the landowner's bill of rights
21 statement prescribed by Section 402.031, Government Code, unless
22 the entity has previously provided a copy of the statement to the
23 property owner;

24 (B) an offer of compensation in an amount equal
25 to or greater than:

26 (i) the market value of the property rights
27 sought to be acquired, including an estimate of damages to the

property owner's remaining property, if any, based on an appraisal of the property prepared by a certified general appraiser licensed under Chapter 1103, Occupations Code; or

(ii) the estimated price or market value of the property rights sought to be acquired based on data for at least three comparable arm's-length sales of a property, including an estimate of damages to the property owner's remaining property, if any, and based on:

(a) the estimated price or market value of the property rights sought to be acquired, based on a comparative market analysis prepared by a real estate broker licensed under Chapter 1101, Occupations Code, or a certified general appraiser licensed under Chapter 1103, Occupations Code;

(b) the estimated price of the property rights sought to be acquired, based on a broker price opinion prepared by a real estate broker licensed under Chapter 1101, Occupations Code; or

(c) the estimated price or market value of the property rights sought to be acquired, based on a market study prepared by a real estate broker licensed under Chapter 1101, Occupations Code, or a certified general appraiser licensed under Chapter 1103, Occupations Code;

(C) as applicable, the complete written report, as prepared by the certified appraiser or real estate broker, that forms the basis for the amount of the offer of compensation under Paragraph (B)(i) or (ii) or a brief written summary that forms the basis for the amount of the offer of compensation under Paragraph

1 (B)(ii)(c);

2 (D) an instrument of conveyance for the property
3 rights sought that complies with Section 21.0114, as applicable;

4 (E) notice of the terms described by Section
5 21.0114(d) for which the property owner may negotiate to be
6 included in a deed, easement, agreement, or other instrument of
7 conveyance relating to the property; and

8 (F) the name and telephone number of a
9 representative of the entity who is:

10 (i) an employee of the entity;

11 (ii) an employee of an affiliate providing
12 services on behalf of the entity;

13 (iii) a legal representative of the entity;

14 or

15 (iv) if the entity does not have employees,
16 an individual designated to represent the day-to-day operations of
17 the entity; and

18 (3) includes in the final offer, if made:

19 (A) a copy of the written appraisal report
20 required by Subsection (b)(4) unless the entity has previously
21 provided a copy of the report to the property owner; and

22 (B) a deed, easement, agreement, or other
23 instrument of conveyance for the property rights sought that
24 complies with Section 21.0114.

25 (d) For purposes of Subsection (c)(2)(B)(ii), a real estate
26 broker licensed under Chapter 1101, Occupations Code, may prepare
27 an estimated price based on a comparative market analysis, a broker

1 price opinion, a market study, or a summary of the market study.
2 The Texas Real Estate Commission may adopt rules to establish
3 requirements associated with this subsection.

4 (e) A condemnation suit may not be abated, delayed, or
5 dismissed for noncompliance with this subchapter, except as
6 provided under Section 21.047(d).

7 (f) A private entity that provides to a property owner an
8 easement form that is generally consistent with the language or
9 provisions required by Section 21.0114(c) and the notice required
10 by Section 21.0114(d) is considered to have complied with Section
11 21.0114 for purposes of Subsection (c)(2)(D) of this section,
12 regardless of whether the private entity subsequently provides to
13 the property owner a different deed, easement, agreement, or other
14 instrument of conveyance as authorized under Sections 21.0114(e)
15 and (f).

16 SECTION 7. Subchapter B, Chapter 21, Property Code, is
17 amended by adding Section 21.0114 to read as follows:

18 Sec. 21.0114. REQUIRED TERMS FOR INSTRUMENTS OF CONVEYANCE
19 OF CERTAIN EASEMENTS. (a) In this section, "private entity":

20 (1) means:

21 (A) a for-profit entity, as defined by Section
22 1.002, Business Organizations Code, however organized, including
23 an affiliate or subsidiary, authorized to exercise the power of
24 eminent domain to acquire private property for public use; or

25 (B) a corporation organized under Chapter 67,
26 Water Code, that has a for-profit entity, however organized, as the
27 sole or majority member; and

1 (2) does not include an entity governed by the Natural
2 Gas Act (15 U.S.C. Section 717 et seq.) unless the entity seeks to
3 acquire property under this chapter.

4 (b) This section applies only to a deed, easement,
5 agreement, or other instrument of conveyance for a pipeline
6 right-of-way easement or an electric transmission right-of-way
7 easement.

8 (c) Except as provided by Subsections (d), (e), and (f), a
9 deed, easement, agreement, or other instrument of conveyance
10 provided to a property owner by a private entity with eminent domain
11 authority to acquire the property interest to be conveyed must
12 include the following terms, as applicable:

13 (1) if the instrument conveys a pipeline right-of-way
14 easement, the following terms with respect to the easement rights
15 granted under the instrument:

16 (A) the maximum number of pipelines that may be
17 installed in the easement;

18 (B) the maximum diameter, excluding any
19 protective coating or wrapping, of each pipeline to be initially
20 installed in the easement;

21 (C) the type or category of substances permitted
22 to be transported through each pipeline to be installed in the
23 easement;

24 (D) a general description of any aboveground
25 equipment or facility the private entity intends to install,
26 maintain, or operate on the surface of the easement;

27 (E) a description or illustration of the location

1 of the easement, including a metes and bounds or centerline
2 description, plat, or aerial or other map-based depiction of the
3 location of the easement on the property;

4 (F) the maximum width of the easement;

5 (G) the minimum depth at which each pipeline to
6 be installed in the easement will initially be installed;

7 (H) a provision identifying whether the private
8 entity intends to double-ditch areas of the easement that are not
9 installed by boring or horizontal directional drilling;

10 (I) a provision requiring the private entity to
11 provide written notice to the property owner at the last known
12 address of the person in whose name the property is listed on the
13 most recent tax roll of any taxing unit authorized to levy property
14 taxes against the property before assigning the private entity's
15 interest under the deed, easement, agreement, or other instrument
16 of conveyance to another entity;

17 (J) a provision describing whether the easement
18 rights are exclusive, nonexclusive, or otherwise limited;

19 (K) a provision limiting the private entity's
20 right to grant a third party access to the easement area for a
21 purpose that is not related to the construction, safety, repair,
22 maintenance, inspection, replacement, operation, or removal of
23 each pipeline to be installed in the easement;

24 (L) a provision regarding the property owner's
25 right to recover actual monetary damages arising from the
26 construction and installation of each pipeline to be installed in
27 the easement, or a statement that the consideration for the

easement includes any monetary damages arising from the construction and installation of each pipeline to be installed in the easement;

(M) a provision regarding the property owner's right after initial construction and installation of each pipeline to be installed in the easement to actual monetary damages arising from the repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed in the easement;

(N) a provision:

(i) regarding the removal, cutting, use, repair, and replacement of gates and fences that cross the easement or that will be used by the private entity; or

(ii) providing for the payment for any damage that is not restored or paid for as part of the consideration for the easement;

(O) a provision:

(i) regarding the private entity's obligation to restore the easement area and the property owner's remaining property, if any, used by the private entity to as near to original condition as is reasonably practicable and to maintain the easement; or

(ii) providing for the private entity to reimburse the property owner for actual monetary damages incurred by the property owner that arise from damage to the easement area and the property owner's remaining property caused by the private entity and not restored or paid for as part of the consideration for the easement; and

1 (P) a provision describing the private entity's
2 rights of ingress, egress, entry, and access on, to, over, and
3 across the easement;

4 (2) if the instrument conveys an electric transmission
5 right-of-way easement:

6 (A) a general description of any use of the
7 surface of the easement the entity intends to acquire;

8 (B) a description or illustration of the location
9 of the easement, including a metes and bounds or centerline
10 description, plat, or aerial or other map-based depiction of the
11 location of the easement on the property;

12 (C) the maximum width of the easement;

13 (D) the manner in which the entity will access
14 the easement;

15 (E) a provision limiting access to the easement
16 area by a third party that has not obtained authorization from the
17 property owner for a purpose that is not related to the transmission
18 line's construction, safety, repair, maintenance, inspection,
19 replacement, operation, or removal;

20 (F) a provision regarding the property owner's
21 right to recover actual monetary damages arising from the
22 construction, repair, maintenance, replacement, or future removal
23 of lines and support facilities after initial construction in the
24 easement, or a statement that the consideration for the easement
25 includes such future damages;

26 (G) a provision:

27 (i) regarding the removal, cutting, use,

repair, and replacement of gates and fences that cross the easement
or that will be used by the private entity; or

(ii) providing for the payment for any
damage that is not restored or paid for as part of the consideration
for the easement;

(H) a provision regarding the entity's
obligation to restore the easement area and the property owner's
remaining property to the easement area's and the remaining
property's original contours and grades, to the extent practicable,
and:

(i) a provision regarding the entity's
obligation to restore the easement area and the property owner's
remaining property following any future damages directly
attributed to the use of the easement by the private entity, to the
extent practicable; or

(ii) a provision that the consideration for
the easement includes future damages to the easement area and the
property owner's remaining property;

(I) a provision describing whether the easement
rights are exclusive, nonexclusive, or otherwise limited; and

(J) a prohibition against the assignment of the
entity's interest in the property to an assignee that will not
operate as a utility subject to the jurisdiction of the Public
Utility Commission of Texas or the Federal Energy Regulatory
Commission without written notice to the property owner at the last
known address of the person in whose name the property is listed on
the most recent tax roll of any taxing unit authorized to levy

1 property taxes against the property;

2 (3) a prohibition against any use of the property
3 being conveyed, other than a use stated in the deed, easement,
4 agreement, or other instrument of conveyance, without the express
5 written consent of the property owner;

6 (4) a provision that the terms of the deed, easement,
7 agreement, or other instrument of conveyance will bind the
8 successors and assigns of the property owner and private entity;
9 and

10 (5) a provision setting forth the applicable insurance
11 or self-insurance to be provided by the private entity.

12 (d) A private entity shall notify the property owner that
13 the property owner may negotiate for the following terms to be
14 included in a deed, easement, agreement, or other instrument of
15 conveyance described by Subsection (c):

16 (1) a provision regarding the property owner's right
17 to negotiate to recover damages, or a statement that the
18 consideration for the easement includes damages, for:

19 (A) damage to vegetation; and

20 (B) the income loss from disruption of existing
21 agricultural production or existing leases based on verifiable loss
22 or lease payments; and

23 (2) a provision:

24 (A) requiring the private entity to maintain at
25 all times while the private entity uses the easement, including
26 during construction and operations on the easement, liability
27 insurance:

1 (i) issued by an insurer authorized to
2 issue liability insurance in this state; and

3 (ii) insuring the property owner against
4 liability for personal injuries and property damage sustained by
5 any person to the extent caused by the negligence of the private
6 entity or the private entity's agents or contractors and to the
7 extent allowed by law; or

8 (B) if the private entity is subject to the
9 jurisdiction of the Public Utility Commission of Texas or has a net
10 worth of at least \$25 million, requiring the private entity to
11 indemnify the property owner against liability for personal
12 injuries and property damage sustained by any person caused by the
13 negligence of the private entity or the private entity's agents or
14 contractors.

15 (e) A private entity or the property owner may:

16 (1) negotiate for and agree to terms and conditions
17 not required by Subsection (c) or provided by Subsection (d),
18 including terms and conditions that differ from or are not included
19 in a subsequent condemnation petition; and

20 (2) agree to a deed, easement, agreement, or other
21 instrument of conveyance that does not include or includes terms
22 that differ from the terms required by Subsection (c).

23 (f) Except as provided by this subsection, this section does
24 not prohibit a private entity or the property owner from agreeing to
25 amend, alter, or omit the terms required by Subsection (c) at any
26 time after the private entity first provides a deed, easement,
27 agreement, or other instrument containing those terms to the

1 property owner, whether before or at the same time that the entity
2 makes an initial offer to the property owner. A private entity that
3 changes the terms required by Subsection (c) must provide a copy of
4 the amended deed, easement, agreement, or other instrument of
5 conveyance to the property owner not later than the seventh day
6 before the date the private entity files a condemnation petition
7 relating to the property.

8 (g) A private entity that amends a deed, easement,
9 agreement, or other instrument of conveyance after the initial
10 offer or final offer is not required to satisfy again any
11 requirement of Section 21.0113 that the private entity has
12 previously satisfied.

13 SECTION 8. Section 21.012, Property Code, is amended by
14 adding Subsection (b-1) to read as follows:

15 (b-1) In addition to the contents prescribed by Subsection
16 (b), a petition filed by a private entity as defined by Section
17 21.0114 to acquire property for a public use must state the terms to
18 be included in the instrument of conveyance under Section
19 21.0114(c).

20 SECTION 9. Not later than December 1, 2021, the Texas Real
21 Estate Commission shall:

22 (1) establish an ombudsman office for landowners as
23 required by Section 1101.162, Occupations Code, as added by this
24 Act; and

25 (2) adopt rules necessary to implement the changes in
26 law made by this Act to Chapter 1101, Occupations Code.

27 SECTION 10. Notwithstanding Section 1101.502(a),

1 Occupations Code, as amended by this Act, and Section 1101.508,
2 Occupations Code, as added by this Act, a person who has submitted
3 an application for the issuance or renewal of a certificate of
4 registration as an easement or right-of-way agent before January 1,
5 2022, is not subject to the education requirements of those
6 provisions until the first renewal of the certificate after March
7 1, 2022.

8 SECTION 11. (a) Except as provided by Subsection (b) of
9 this section, the changes in law made by this Act to Chapter 21,
10 Property Code, apply to the acquisition of real property in
11 connection with an initial offer made under Chapter 21, Property
12 Code, on or after the effective date of this Act. An acquisition of
13 real property in connection with an initial offer made under
14 Chapter 21, Property Code, before the effective date of this Act is
15 governed by the law applicable to the acquisition immediately
16 before the effective date of this Act, and that law is continued in
17 effect for that purpose.

18 (b) The changes in law made by this Act to Chapter 21,
19 Property Code, do not apply to an electric transmission project for
20 which the Public Utility Commission of Texas has issued a final and
21 appealable order that amends a certificate of convenience and
22 necessity before the effective date of this Act.

23 SECTION 12. (a) Except as provided by Subsection (b) of
24 this section, this Act takes effect January 1, 2022.

25 (b) Section 9 of this Act takes effect September 1, 2021.